



California Fair Political Practices Commission

August 23, 1988

Robert N. Joehnck
801 12th Street, Suite 500
Sacramento, CA 95814

Re: Your Request For Advice
Our File No. I-88-263

Dear Mr. Joehnck:

You have requested advice on behalf of Lila B. Fleace about application of the Political Reform Act (the "Act")^{1/} to her duties as elected City Clerk of the City of Wheatland and to her husband's duties should he be elected to the city council.

Your question does not involve a specific pending decision. Therefore, we treat your request as one for informal assistance pursuant to Regulation 18329(c)(3)(D) and (F) (copy enclosed).^{2/}

QUESTIONS

Mrs. Fleace is an elected city clerk and a full-time city employee. Her husband, Mr. Fleace, may run for city council.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

1. May Mr. Fleace serve on the city council while his wife is city clerk?

2. Will Mrs. Fleace's position as city clerk require Mr. Fleace to disqualify himself from decisions before the city council?

3. Will Mr. Fleace's position on the city council require Mrs. Fleace to disqualify herself from actions in her capacity as city clerk.

CONCLUSIONS

1. The Act does not prohibit Mr. Fleace from serving on the city council while his wife is city clerk.

2. The Act requires Mr. Fleace to disqualify himself from participating in a governmental decision that would affect his wife's government salary by \$250 or more in a year if the decision would affect his wife differently from other employees in a similar position. For example, Mr. Fleace may not participate in a city council decision to discipline Mrs. Fleace which would decrease her salary by \$250 or more in a year. Mr. Fleace, however, could participate in a decision about the city clerk's budget, if the decision did not affect Mrs. Fleace's salary by \$250 or more.

3. Similarly, Mrs. Fleace would be disqualified from participating in a governmental decision that would increase or decrease her husband's personal income or expenses by \$250 or more in a year. For example, the city clerk also is the filing officer for city candidates' campaign statements. Mrs. Fleace would be disqualified from a decision to fine her husband for filing a late campaign statement, if the fine were \$250 or more.

The provisions of Section 1090 also may affect decisionmaking by an elected city official or a city employee. The Commission does not administer this section. We refer you to the office of the Attorney General for advice regarding Section 1090.

FACTS

Wheatland has seven elected officials -- five councilmembers, a city clerk and a city treasurer. The voters establish the city clerk's salary which now is \$75 a month. The city council sets salaries of and bargains directly with the ten city employees.

Mrs. Fleace is Wheatland's city clerk. Government Code Section 40810 et seq. lists the duties of the city clerk. They include being the city accounting officer, publishing the city's financial report, certifying the passage and publication of ordinances, and being custodian of the city seal. In your opinion, most of the city clerk's duties are ministerial. Although you cannot think of a specific decision, you believe it is conceivable the city clerk might make a decision that would affect Mr. Fleace financially.

In addition to being city clerk, Mrs. Fleace also is one of two full-time city hall employees. When the other city hall employee is absent, Ms. Fleace may perform all functions necessary for running city hall. These duties include meeting the public, keeping records for the city's water and sewer departments, and performing secretarial functions.

Mrs. Fleace's husband intends to run for a seat on the city council.

ANALYSIS

The Act does not prohibit a person from seeking or holding city office while his or her spouse is an officer of the same city. Instead, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which an official knows or has reason to know he or she has a financial interest. A public official has a financial interest in a decision that will have a reasonably foreseeable material financial effect on the official or the official's immediate family, or on a source of income of \$250 or more promised to or received by the official within 12 months before a decision. (Section 87103(c).) "Immediate family" includes an official's spouse and dependent children. (Section 82029.)

Pursuant to Section 82030(b), the definition of "income" excludes salary from a government agency. Therefore, for purposes of the Act, a city councilmember does not have an economic interest in his wife's salary from a city. In turn, the wife does not have an economic interest in the income her husband receives as a councilmember. Therefore, neither Mr. nor Mrs. Fleace's income from Wheatland generally would create a conflict of interest situation.

Although neither spouse would have an economic interest in the other's income from the city, Regulation 18702.1(a)(4) (copy enclosed) prohibits an official from participating in a decision if it is foreseeable that the decision would increase the official's personal expenses, income, assets or liabilities

or those of the official's spouse or dependent children by \$250 or more in a year. Subdivision (c)(2) of Regulation 18702.1, however, is an exception to this rule. Subdivision (c)(2) provides the following:

(c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:

(2) The decision only affects the salary, per diem, or reimbursement for expenses the official or his or her spouse receives from a state or local government agency. This subsection does not apply to decisions to hire, fire, promote, demote, or discipline an official's spouse, or to set a salary for an official's spouse which is different from salaries paid to other employees of the spouse's agency in the same job classification or position;

Regulation 18702.1(c)(2).

Therefore, an official may participate in decisions which affect his or her spouse's government salary no differently than the salaries of other government employees in the same position or job classification. However, an official is disqualified from participating in decisions that would affect only his or her spouse's government salary, if the amount of the effect would be \$250 or more in a year.

Disqualification Issues For Mr. Fleace

If elected, Mr. Fleace would be disqualified from participating in a decision to fire, promote, demote or discipline his wife, if his wife's government salary would increase or decrease by \$250 or more in a year. (Plisky Advice Letter, No. A-86-149; Hill Advice Letter, No. I-86-336, copies enclosed.) He also would be disqualified from participating in a decision that would increase or decrease his wife's salary only, and not the salary of other city employees in the same job classification, by \$250 or more in a year.

On the other hand, Mr. Fleace could participate in a decision about salaries for all city employees, including his wife's, if the decision did not treat Mrs. Fleace's salary differently from that of any other employee in the same job classification. He also could participate in other personnel decisions that would not single out his wife nor treat her differently from other employees in the same job classification (i.e., other elected city officers or other full-time city hall

employees). This includes participating in collective bargaining decisions. It also includes increasing the city clerk's budget as long as the decision does not affect Mrs. Fleace's income by \$250 or more.

Disqualification Issues For Mrs. Fleace

Mrs. Fleace is the elected city clerk and also is a city employee. Considering the primarily ministerial nature of her job duties, however, it is difficult to conceive of a situation that would require disqualification because of her husband's position on the city council. Nevertheless, Mrs. Fleace would be disqualified from participating in any governmental decision that would have a foreseeable and material financial effect on her husband (i.e., a decision that would affect his personal income or expenses by \$250 or more in a year). For example, the city clerk also is the filing officer for city candidates' campaign statements. (Sections 84215 and 91013.) Mrs. Fleace would be disqualified from a decision to fine her husband for filing a late campaign statement, if the fine were \$250 or more.

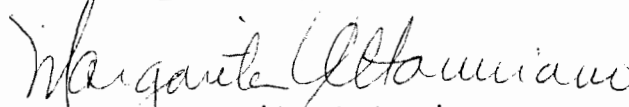
Application of Other Laws

Section 1090 also may apply to a decision before the city council or the city clerk.^{3/} The Commission, however, does not administer this section. Therefore, we refer you to the Attorney General for advice regarding Section 1090.

I hope this letter satisfactorily answers your request for advice. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:aa

Enclosures

^{3/} Section 1090 prohibits a public official from making a contract in which he or she has a financial interest.

Robert N. Joehnck
Attorney at Law

JUL 8 8 45 AM '88

801 12th Street, Suite 500
Sacramento, California 95814

(916) 442-2140

June 30, 1988

Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, California 95804-0807

Gentlemen:

The undersigned is the City Attorney of the City of Wheatland ("City") in Yuba County. In such capacity I have rendered an opinion to Lila B. Fleace, the City's elected City Clerk, that there is no violation of the Political Reform Act of 1974 as amended to date, resulting from the fact that Mrs. Fleace's husband intends to be a candidate and may be elected to a vacant position on the City Council at the November 8, 1988 municipal election (consolidated with the statewide general election to be held on that date).

I have further advised her that if her husband was elected to that position that there would be instances in which either he or she, or perhaps both of them, would likely be disqualified from participating in decisions relating to the office of his or her spouse. While these situations would have to be evaluated on a case by case basis it is anticipated that Mr. Fleace would be disqualified in most cases from participating in decisions relating to Mrs. Fleace's office as City Clerk, or her employment by the City in capacity's other than City Clerk.

The factual context within which my opinion was given is as follows:

Wheatland is an incorporated general law city in Yuba County having been originally incorporated in 1874. It's present population is about 1700 persons.

Fair Political Practices Commission

Page Two

The City is governed by a five person elected City Council. The City also has elected positions of City Treasurer and City Clerk. Lila B. Fleace was elected to a four year term as City Clerk in November, 1986.

Pursuant to an initiative ordinance adopted by the votes of the City some years ago, the City Clerk receives a monthly salary of \$75.00 for the performance of her statutory duties as City Clerk. Thus, the present salary of that office has been established by a vote of the people and any increase or decrease in that salary can only be made as a result of a vote of the electorate and cannot presently be set by the City Council.

- The City also employs Mrs. Fleace as one of two full time employees in City Hall. Her duties are generally those of an office manager. Due to the small size of the City staff, however, Mrs. Fleace also serves in a number of capacities such as recording clerk for Council meetings, performs secretarial functions, meets with members of the public coming into City Hall on a variety of matters and acts as records keeper/billing agent for the City's water and sewer departments. In the absence of the second City Hall employee Mrs. Fleace may perform almost any function relating to the operations of a small City Hall.

Mrs. Fleace's duties and salary -- apart from those mandated by statute for her position as elected City Clerk and her salary voted by the electorate for the performance of such duties -- are set from time to time by the City Council. The scope of and compensation associated with these duties may, and will probably not, remain static over time.

It appears certain that there will be instances when Mr. Fleace, if elected to the City Council, would be prohibited from participating in decisions relating to the City Clerk's office or Mrs. Fleace's duties and compensation in her employee capacity with the City other than as City Clerk. Likewise, it

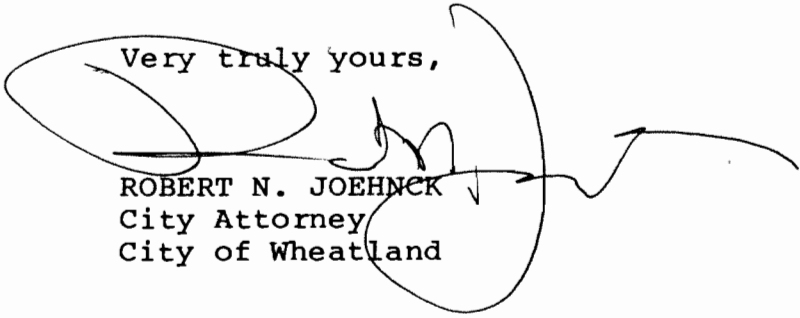
Fair Political Practices Commission
Page Three

is conceivable that Mrs. Fleace might have some matters come before her in either her capacity as City Clerk or as a City employee where she would be prohibited from participating in a decision which might impact on her husband as a member of the City Council. However, in my opinion nothing in the Act would disqualify Mr. Fleace from being a candidate for or prevent his acting as a member of the City Council if elected to it, solely because his wife was the elected City Clerk.

Conversely, it is my opinion that nothing in the Act would prohibit Mrs. Fleace from exercising her elected position of City Clerk if Mr. Fleace is elected to the City Council.

I am requesting on behalf of Mrs. Fleace that you issue your written advice pursuant to Section 831114(a) of the Government Code setting forth your opinion on the matters set forth above. In view of the nearness of the filing deadline for municipal candidates your prompt attention to this matter would be appreciated.

Very truly yours,



ROBERT N. JOEHNCK
City Attorney
City of Wheatland

RNJ/ds

cc: Lila B. Fleace
Mayor, City Council



California Fair Political Practices Commission

August 23, 1988

Robert N. Joehnck
801 12th Street, Suite 500
Sacramento, CA 95814

Re: Your Request For Advice
Our File No. I-88-263

Dear Mr. Joehnck:

You have requested advice on behalf of Lila B. Fleace about application of the Political Reform Act (the "Act")^{1/} to her duties as elected City Clerk of the City of Wheatland and to her husband's duties should he be elected to the city council.

Your question does not involve a specific pending decision. Therefore, we treat your request as one for informal assistance pursuant to Regulation 18329(c)(3)(D) and (F) (copy enclosed).^{2/}

QUESTIONS

Mrs. Fleace is an elected city clerk and a full-time city employee. Her husband, Mr. Fleace, may run for city council.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

1. May Mr. Fleace serve on the city council while his wife is city clerk?

2. Will Mrs. Fleace's position as city clerk require Mr. Fleace to disqualify himself from decisions before the city council?

3. Will Mr. Fleace's position on the city council require Mrs. Fleace to disqualify herself from actions in her capacity as city clerk.

CONCLUSIONS

1. The Act does not prohibit Mr. Fleace from serving on the city council while his wife is city clerk.

2. The Act requires Mr. Fleace to disqualify himself from participating in a governmental decision that would affect his wife's government salary by \$250 or more in a year if the decision would affect his wife differently from other employees in a similar position. For example, Mr. Fleace may not participate in a city council decision to discipline Mrs. Fleace which would decrease her salary by \$250 or more in a year. Mr. Fleace, however, could participate in a decision about the city clerk's budget, if the decision did not affect Mrs. Fleace's salary by \$250 or more.

3. Similarly, Mrs. Fleace would be disqualified from participating in a governmental decision that would increase or decrease her husband's personal income or expenses by \$250 or more in a year. For example, the city clerk also is the filing officer for city candidates' campaign statements. Mrs. Fleace would be disqualified from a decision to fine her husband for filing a late campaign statement, if the fine were \$250 or more.

The provisions of Section 1090 also may affect decisionmaking by an elected city official or a city employee. The Commission does not administer this section. We refer you to the office of the Attorney General for advice regarding Section 1090.

FACTS

Wheatland has seven elected officials -- five councilmembers, a city clerk and a city treasurer. The voters establish the city clerk's salary which now is \$75 a month. The city council sets salaries of and bargains directly with the ten city employees.

Mrs. Fleace is Wheatland's city clerk. Government Code Section 40810 et seq. lists the duties of the city clerk. They include being the city accounting officer, publishing the city's financial report, certifying the passage and publication of ordinances, and being custodian of the city seal. In your opinion, most of the city clerk's duties are ministerial. Although you cannot think of a specific decision, you believe it is conceivable the city clerk might make a decision that would affect Mr. Fleace financially.

In addition to being city clerk, Mrs. Fleace also is one of two full-time city hall employees. When the other city hall employee is absent, Ms. Fleace may perform all functions necessary for running city hall. These duties include meeting the public, keeping records for the city's water and sewer departments, and performing secretarial functions.

Mrs. Fleace's husband intends to run for a seat on the city council.

ANALYSIS

The Act does not prohibit a person from seeking or holding city office while his or her spouse is an officer of the same city. Instead, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which an official knows or has reason to know he or she has a financial interest. A public official has a financial interest in a decision that will have a reasonably foreseeable material financial effect on the official or the official's immediate family, or on a source of income of \$250 or more promised to or received by the official within 12 months before a decision. (Section 87103(c).) "Immediate family" includes an official's spouse and dependent children. (Section 82029.)

Pursuant to Section 82030(b), the definition of "income" excludes salary from a government agency. Therefore, for purposes of the Act, a city councilmember does not have an economic interest in his wife's salary from a city. In turn, the wife does not have an economic interest in the income her husband receives as a councilmember. Therefore, neither Mr. nor Mrs. Fleace's income from Wheatland generally would create a conflict of interest situation.

Although neither spouse would have an economic interest in the other's income from the city, Regulation 18702.1(a)(4) (copy enclosed) prohibits an official from participating in a decision if it is foreseeable that the decision would increase the official's personal expenses, income, assets or liabilities

or those of the official's spouse or dependent children by \$250 or more in a year. Subdivision (c)(2) of Regulation 18702.1, however, is an exception to this rule. Subdivision (c)(2) provides the following:

(c) Notwithstanding subsection (a) an official does not have to disqualify himself or herself from a governmental decision if:

(2) The decision only affects the salary, per diem, or reimbursement for expenses the official or his or her spouse receives from a state or local government agency. This subsection does not apply to decisions to hire, fire, promote, demote, or discipline an official's spouse, or to set a salary for an official's spouse which is different from salaries paid to other employees of the spouse's agency in the same job classification or position;

Regulation 18702.1(c)(2).

Therefore, an official may participate in decisions which affect his or her spouse's government salary no differently than the salaries of other government employees in the same position or job classification. However, an official is disqualified from participating in decisions that would affect only his or her spouse's government salary, if the amount of the effect would be \$250 or more in a year.

Disqualification Issues For Mr. Fleace

If elected, Mr. Fleace would be disqualified from participating in a decision to fire, promote, demote or discipline his wife, if his wife's government salary would increase or decrease by \$250 or more in a year. (Plisky Advice Letter, No. A-86-149; Hill Advice Letter, No. I-86-336, copies enclosed.) He also would be disqualified from participating in a decision that would increase or decrease his wife's salary only, and not the salary of other city employees in the same job classification, by \$250 or more in a year.

On the other hand, Mr. Fleace could participate in a decision about salaries for all city employees, including his wife's, if the decision did not treat Mrs. Fleace's salary differently from that of any other employee in the same job classification. He also could participate in other personnel decisions that would not single out his wife nor treat her differently from other employees in the same job classification (i.e., other elected city officers or other full-time city hall

employees). This includes participating in collective bargaining decisions. It also includes increasing the city clerk's budget as long as the decision does not affect Mrs. Fleace's income by \$250 or more.

Disqualification Issues For Mrs. Fleace

Mrs. Fleace is the elected city clerk and also is a city employee. Considering the primarily ministerial nature of her job duties, however, it is difficult to conceive of a situation that would require disqualification because of her husband's position on the city council. Nevertheless, Mrs. Fleace would be disqualified from participating in any governmental decision that would have a foreseeable and material financial effect on her husband (i.e., a decision that would affect his personal income or expenses by \$250 or more in a year). For example, the city clerk also is the filing officer for city candidates' campaign statements. (Sections 84215 and 91013.) Mrs. Fleace would be disqualified from a decision to fine her husband for filing a late campaign statement, if the fine were \$250 or more.

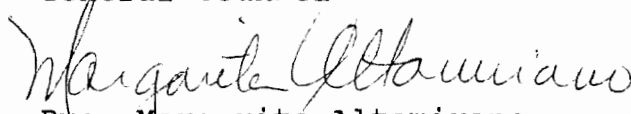
Application of Other Laws

Section 1090 also may apply to a decision before the city council or the city clerk.^{3/} The Commission, however, does not administer this section. Therefore, we refer you to the Attorney General for advice regarding Section 1090.

I hope this letter satisfactorily answers your request for advice. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:aa

Enclosures

^{3/} Section 1090 prohibits a public official from making a contract in which he or she has a financial interest.

Robert N. Joehnck

Attorney at Law

JUL 8 5 42 AM '88

801 12th Street, Suite 500
Sacramento, California 95814

(916) 442-2140

June 30, 1988

Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, California 95804-0807

Gentlemen:

The undersigned is the City Attorney of the City of Wheatland ("City") in Yuba County. In such capacity I have rendered an opinion to Lila B. Fleace, the City's elected City Clerk, that there is no violation of the Political Reform Act of 1974 as amended to date, resulting from the fact that Mrs. Fleace's husband intends to be a candidate and may be elected to a vacant position on the City Council at the November 8, 1988 municipal election (consolidated with the statewide general election to be held on that date).

I have further advised her that if her husband was elected to that position that there would be instances in which either he or she, or perhaps both of them, would likely be disqualified from participating in decisions relating to the office of his or her spouse. While these situations would have to be evaluated on a case by case basis it is anticipated that Mr. Fleace would be disqualified in most cases from participating in decisions relating to Mrs. Fleace's office as City Clerk, or her employment by the City in capacity's other than City Clerk.

The factual context within which my opinion was given is as follows:

Wheatland is an incorporated general law city in Yuba County having been originally incorporated in 1874. It's present population is about 1700 persons.

The City is governed by a five person elected City Council. The City also has elected positions of City Treasurer and City Clerk. Lila B. Fleace was elected to a four year term as City Clerk in November, 1986.

Pursuant to an initiative ordinance adopted by the votes of the City some years ago, the City Clerk receives a monthly salary of \$75.00 for the performance of her statutory duties as City Clerk. Thus, the present salary of that office has been established by a vote of the people and any increase or decrease in that salary can only be made as a result of a vote of the electorate and cannot presently be set by the City Council.

The City also employs Mrs. Fleace as one of two full time employees in City Hall. Her duties are generally those of an office manager. Due to the small size of the City staff, however, Mrs. Fleace also serves in a number of capacities such as recording clerk for Council meetings, performs secretarial functions, meets with members of the public coming into City Hall on a variety of matters and acts as records keeper/billing agent for the City's water and sewer departments. In the absence of the second City Hall employee Mrs. Fleace may perform almost any function relating to the operations of a small City Hall.

Mrs. Fleace's duties and salary -- apart from those mandated by statute for her position as elected City Clerk and her salary voted by the electorate for the performance of such duties -- are set from time to time by the City Council. The scope of and compensation associated with these duties may, and will probably not, remain static over time.

It appears certain that there will be instances when Mr. Fleace, if elected to the City Council, would be prohibited from participating in decisions relating to the City Clerk's office or Mrs. Fleace's duties and compensation in her employee capacity with the City other than as City Clerk. Likewise, it

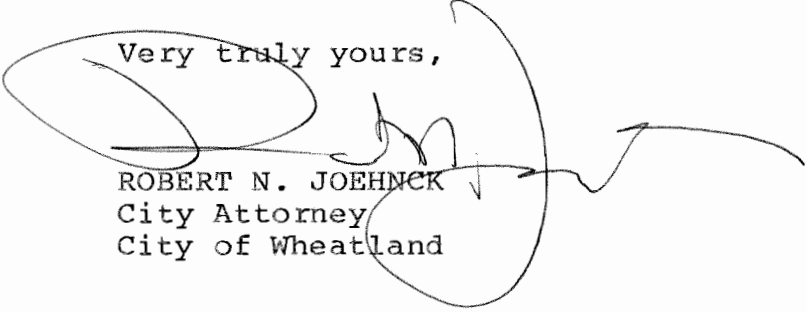
Fair Political Practices Commission
Page Three

is conceivable that Mrs. Fleace might have some matters come before her in either her capacity as City Clerk or as a City employee where she would be prohibited from participating in a decision which might impact on her husband as a member of the City Council. However, in my opinion nothing in the Act would disqualify Mr. Fleace from being a candidate for or prevent his acting as a member of the City Council if elected to it, solely because his wife was the elected City Clerk.

Conversely, it is my opinion that nothing in the Act would prohibit Mrs. Fleace from exercising her elected position of City Clerk if Mr. Fleace is elected to the City Council.

I am requesting on behalf of Mrs. Fleace that you issue your written advice pursuant to Section 831114(a) of the Government Code setting forth your opinion on the matters set forth above. In view of the nearness of the filing deadline for municipal candidates your prompt attention to this matter would be appreciated.

Very truly yours,



ROBERT N. JOEHNCK
City Attorney
City of Wheatland

RNJ/ds

cc: Lila B. Fleace
Mayor, City Council